A note on academic plagiarism*

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Some such clause appears in the standard book contract between an author and his or her publisher. Signing their consent, authors take on a legally binding obligation to deliver only 'an original work' for publication. But it is not law alone that regulates our conduct as academic authors. To one side of the legal provisions governing intellectual property lies a less certain because less juridical 'machinery' for handling academic plagiarism. This administrative and ethical machinery, and the often shadowy border zone in which it operates, is the subject of this article. My argument, however, will be less penumbral: the future management of academic plagiarism is a task for those concerned with the ethics of the profession rather than with copyright reform.

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We can begin to clarify what is at stake by drawing a general distinction between piracy and plagiarism. In the case of an already successful publication, the interest of a pirate is to reproduce the work with all due credit given to the original author, whose name remains a selling point. The plagiarist, by contrast, disguises the authorship of the work to pass it off as his or her own. Broadly speaking, piracy is what rival publishers do to one another; plagiarism is a similar unfriendly act between authors. Where it is a matter of the unauthorised reproduction of a protected book or article, the copyright owner can litigate for violation of copyright, that is, take legal action against a piracy or plagiarism.

Once a work is out of copyright and in the public domain - generally speaking fifty years post mortem of the author - its unauthorized copying is no longer a matter of copyright infringement. However, an act of plagiarism can involve the unacknowledged copying of an unprotected work. Here we see the looser and less determinate character of plagiarism in comparison with the legal definition of what counts as breach of copyright. Plagiarism, then, is not necessarily a legal matter; it is an ethical matter of honour (or shame) and professional standing.

Perhaps because it is something other than a breach of copyright academic plagiarism can remain concealed from sight most of the time. It is usually less noisy than the cases of commercial literary plagiarism that threaten to become a fully legal matter, not least because of the financial stakes involved. In the 1988 confrontation between Colleen McCullough and the estate of the Canadian writer, Lucy Maud Montgomery, the former's *The Ladies of Missalonghi* was suspected by some of an excessive coincidence with the latter's *The Blue Castle*. The best-selling Australian novelist rejected any notion of plagiarism on her part, invoking subconscious recollection to explain textual resemblances and personal experience to confirm the difference between the works in question. More recently Blanche D'Alpuget found reason publicly to depict Stan Anson's 1991 psychobiography - *Hawke: an Emotional Life* - as derived from and thus a plagiarism of her own study of that subject in *Robert J. Hawke. A Biography*. D'Alpuget had recourse to the press as the forum in which to defend her public reputation (and to discredit Anson's). Plagiarism, it seems, is a wrong pursued in contexts far less juridified than the courts. Indeed, on the day of writing this comment (11 January 1993), the letters section of *The Australian* carries the protest of Philip Drew, author of a study of the colonial bungalow, at a remark of the newspaper's reviewer, Clive Lucas, 'that I [Drew] drew heavily on Dr James Broadbent's 1985 ANU thesis *Aspects of Domestic Architecture in NSW 1788-1843*, in writing *Veranda: Embracing Place*. Is he accusing me of plagiarism - if so, why does he not say so?'. The urgency and anxiety of the questions speaks volumes.[1] But 'going public' in the press rather than going to court is to argue one's case in a milieu where procedures and sanctions are less certain and more variable than in the legal setting. In relation to the ethical government of our profession, we might therefore ask just how certain and how variable the Australian university currently is in its handling of academic plagiarism.

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We have all heard of one or more cases, indirectly if not directly, and sometimes we also know of the distress plagiarism causes its victims.[2] Yet it retains the shadowy existence of a family or college secret, something to be dealt with as privately as possible behind thick closed doors. There is no shortage of declarations of principle and even disciplinary actions routinely directed to stop cheating by those we train, our undergraduate students in particular. But, as Carolyn J. Mooney reported last year in the American *Chronicle of Higher Education*, actual practice does not correspond to stated principle:

> *A recent rash of plagiarism cases has sensitized academic institutions and learned societies to the problem and prompted some to adopt new and tougher policies. But many scholars, whistle blowers, and institutions say the handling of academic plagiarism remains uneven and, in many cases, ineffective. While there is no evidence to suggest that scholarly plagiarism is on the rise, some scholars say they are frustrated nonetheless because they think the academic community doesn't take seriously enough an offense that is the very antithesis of what scholars do.* (Mooney 1992:13)

In addition to a review of the 'the recent rash' of cases, Mooney identifies the actors in the field - individual scholars, journal editors, learned societies and universities. She also itemizes the issues for consideration:

> *What is plagiarism? If a scholar unintentionally copies another person's work without crediting it, is that plagiarism? Who should investigate? What constitutes appropriate due process and punishment? And, perhaps most controversial of all, what is the academic community's obligation to inform its members about proven plagiarism?* (Mooney 1992:1)

These issues concern our professional ethics and the means of achieving a more fully professional conduct. As noted at the outset, this is not primarily a task for those involved with reforming copyright law.

The delicacy of the task is evident from American cases itemized in the *Chronicle of Higher Education*. A glance at these cases also gives a concrete sense of the density and complexity of the issue.

To take just three instances. In 1981 a historian at Texas Tech University, Jayme Aaron Sokolow, was suspected of submitting for publication a manuscript plagiarized from a University of Massachusetts professor's dissertation.[3] Although the manuscript was published by an academic press, Sokolow resigned. And although two learned societies, the American History Association and the American Association of University Professors, found a breach of ethics, there was no disclosure of the names in question. For his part, Sokolow did not admit plagiarism; his action was limited to the publication of a note of apology, a fact that the Massachusetts 'plaintiff' - Stephen Nissenbaum - considered quite inadequate since it fell short of a general acknowledgement by and for the community of academic historians that a 'plagiarism' had occurred.

A second case involved Charles P. Gallmeier, a sociologist at California State University at Long Beach, and his alleged plagiarism of a 1983 article in *Symbolic Interaction* in a refereed article published over his name in 1987 in *Sociology of Sport Journal*. Gallmeier did not admit plagiarism, although in 1990 he too published a letter of apology; this was in the newsletter of the Society for the Study of Symbolic Interaction, publishers of the journal in which the original article had appeared. The letter referred to an 'unfortunate correspondence' which Gallmeier attributed to 'inaccurate note taking and similarities in the language used by the sports figures described in both articles'. (Mooney 1992:1) Several things had happened between the 1987 publication and the 1990 apology: resemblances between the two papers were noted and an academic whistle blower informed the California State University system; Gallmeier left Long Beach to take up an appointment at Valparaiso University with positive referees' reports from California State but without either Gallmeier or his referees mentioning the plagiarism allegation to his new employer. This information was passed to Valparaiso only after the Society for the Study of Symbolic Interaction had considered the charge and, without confirming plagiarism, decided that Gallmeier should nonetheless publish the letter of apology in the Society's newsletter. Valparaiso has subsequently not reappointed Gallmeier, but it is not clear if this was solely on the grounds of the plagiarism charge which, as indicated above, he still denies. The American Sociology Association became involved and, in 1990, albeit without making a public disclosure, recommended that Gallmeier not include the disputed item in his listed publications and that he cease citing the article and discourage others from doing so. Interviewed last year for the *Chronicle of Higher Education*, Gallmeier commented: 'I believe I messed up an article. I believe I deserve to apologize. But I didn't do it on purpose. ... I was never convicted, but I was never exonerated. ... I'm in limbo'. (Mooney 1992:11)

Still in contention is the case involving a professor of history at the University of Massachusetts at Amherst, Stephen B. Oates, and a biography of Lincoln. The professional ethics committee of the American History Association is conducting its inquiry but, already, a a group of twenty-two prominent scholars considering the case has supported Oates' claim to be innocent of plagiarism. In this instance, the writer charged with plagiarism invokes the 'common body of recorded knowledge' - we might note the copyright principle that no individual can place a reservation on history - as the explanation for the convergence of texts. (in Mooney 1992:13)

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We are now better placed to comment on the question of how to regulate academic plagiarism. Some lessons are not in doubt: we should not presuppose universal good conduct among academics. Nor should we presuppose a ready answer to the question. Issues of definition remain to be resolved: how much and what manner of resemblance between texts constitutes a plagiarism? In defining a copyright infringement, it is the original expression or distinguishable personal manner of representating an idea that is protected, not the idea itself. But what if an alleged plagiarism involves 'similarities in the language used' by the subjects studied or a 'common body of recorded knowledge'? Or, to turn to a quite different question, does an act of plagiarism presume an intention to deceive? In criminal law a good motivation is no defence against a charge of criminal action; hence the failure of the Charles Manson ploy of pleading a Christ-like justification for a cleansing murder. The foregoing cases of possible plagiarism leave the status of intention vague. In the Gallmeier case, the 'defendant' admitted to careless note taking but denied an intention to pass off another's work as his own. Most interesting is the amendment made by the American History Association in 1990 to its policy. Commenting on the deletion of the existing reference to 'intent to deceive', the Association's deputy executive director James B. Gardner states: 'The problem is, they [the plagiarist] improperly used someone else's work - regardless of why they did it'; and he adds that excuses in the style of Gallmeier's 'will be easily disposed of if scholars take seriously the injunction to check their manuscripts against the underlying texts prior to publication'(in Money 1992: 16). In this attributing of an 'intention' independent of actual 'motivation' - 'regardless of why they did it' - a congruence is emerging between the ethical reasoning of an academic association and the more formal reasoning of the criminal law (particularly the latter's style of dealing with offences of strict liability).

In some scholarly fields there might be extreme reluctance so to dismiss the factor of motivation and infer an intention to plagiarise. Where charges of plagiarism arise we can thus anticipate significant variation in conceptualization, policy and disciplinary practice between the functionally differented research cultures - 'subcultures' better indicates the plurality of norms and traditions of conduct. Not the least cause of variation will be the lack of agreed criteria for demarcating 'original' from 'unoriginal' work. A colourful if antique illustration of this cultural localism is provided by the historical attitude among seventeenth-century English common lawyers. A 'persistent problem of status confronted the treatise writer in a legal world in which the modern concept of authority, attached peculiarly to judges, had begun to emerge; the text writer, unless he himself is a judge, possesses as an individual no authority derived from office. Consequently his views are important only if they are unoriginal'. (Simpson 1987: 279) Without looking so far to the past, it is indisputable that among us today 'originality' covers a wide swathe, a fact known only too well to anyone who has attempted to define in a sentence the requirement that PhD research must constitute an 'original contribution' to knowledge. A historical thesis, a mathematical proof, a circuit layout, a reading of Joyce's *Ulysses* - like *Ulysses* itself - may all be said to be 'original', but not in the same way!

Attempts at a standard to regulate the whole landscape of contemporary fields of knowedge must start by suspecting as utopian the discovery of a common code for handling academic plagiarism. It is not just a matter of conception; practical organisational variations are equally in evidence between the learned societies that 'police' (some) disciplines. As the cited cases demonstrate, some learned societies - the American History Association and the American Sociological Association among them - have standing bodies with competence to consider charges of plagiarism and to determine sanctions. Others lack a code of ethics and have no clear competence of this sort - this was so for the Society for the Study of Symbolic Interaction. Each of these separate societies or associations constitutes a specific milieu that determines what will count, for the purposes of that particular association and field of knowledge, as unethical conduct. The picture will also vary from one university to the next as to the definition of plagiarism, its classification as an offence, the procedures and due process for dealing with allegations and complaints, and the sanctions available.

Historical contingency explains this motley circumstance. Even in an environment of systemic reform directed to improving academic performance, where more rather than less attention will focus on factors relating to publication rates and where the incidence of plagiarism may increase under the growing pressure to publish, we should not underestimate the complexity of the decisions involved in regulating plagiarism. Let me signal three indicative issues:

- There is no self-evident answer even to basic questions of definition, such as where to draw a line between academic conduct that is merely careless scholarship and plagiaristic conduct that is a serious professional malpractice.[4] This question cannot be resolved by intuition, by searching for the answer through moral reflexion on oneself; it is a question whose answer must be decided. And decided it will be! The real question concerns the mechanisms by which the best decision can be reached and the best administrative practice established in this

area of professional conduct.

- Second, a determination is necessary on the matter of 'relative' plagiarism, that is, where the improper (because unacknowledged) use of another's work is of a limited character, some sections of the offending publication being properly attributed to their rightful author. The criterion of 'relative' plagiarism is needed to differentiate more from less serious offences and to establish a tariff of sanctions and penalties. The sociologist Gallmeier, it will be recalled, was required to publish a letter of apology in a newsletter. This was distributed, I presume, only to paid up members of the Society for the Study of Symbolic Interaction, that is, to a private readership somewhat less extensive than the academic community.
- A third issue thus follows: the agitated question of public disclosure. Where charges of plagiarism are concerned, the academic habit of mind for individuals and institutions remains one of secrecy and self-protection. The cases considered above suggest this is so even in the U.S. It is right that personal identities - the names of 'plaintiff' and 'defendant' - should not be disclosed prior to a verdict being reached on a charge of plagiarism. But then, at that point, should not the guilty party and the accuser or whistle blower - who may or may not be the author whose work has been plagiarized - be publicly identified? This poses a further question: by what means of publication should the plagiarist be named and observability enforced?[5]

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Questions about plagiarism are appropriate in circumstances of proper concern with how public funding is utilized in the universities. However, for a select band of readers it will have seemed otiose to spend so many paragraphs on what for them has been revealed as a fundamental theoretical and historical error - the institution of individual authorship, together with the authoritarian structures that support it. But I have done this in full awareness that the 'death of the author' has become a cultural commonplace:

> *There is no such thing as literary 'originality', no such thing as the 'first' literary work: all literature is intertextual. A specific piece of writing thus has no clearly defined boundaries: it spills over constantly into the works clustered around it, generating a hundred different perspectives that dwindle to a vanishing point. The work cannot be sprung shut, rendered determinate, by an appeal to the author, for the 'death of the author' is a slogan that modern criticism is now confidently able to proclaim.* (Eagleton 1983:138)

With this alleged passing, a 'theory of plagiarism' has emerged as an aesthetically radical and politically correct pointer to intellectual conduct. The 'theory' is that by deliberate and publicly disclosed acts of plagiarism we emancipate ourselves from established authority, we resist commodification of our creative potential by amoral market forces and, at last, we see through the ideology of private property that has dared to extend its claims to control that which cannot be 'owned' - language, meaning and images.

This postmodern 'theory of plagiarism' has furnished a rationale for cosmopolitan art practices - 'appropriation' art - and for commercial 'dance' music techniques of 'scratching' and 'sampling', that is, creating a new work by appropriating the recorded work of others. Among some literary intellectuals, this theory has even been accorded primacy over copyright law:

> *'Originality', the necessary and enabling concept that underlies the [legal] notion of the proprietary author, is at best a problematic term in current thought, which stresses rather the various ways in which, as it is often put, language speaks through man. Where does one text end and another begin? What current literary thought emphasizes is that texts permeate and enable each other, and from this point of view the notion of distinct boundaries between texts, a notion crucial to the operation of the modern system of literary property, becomes difficult to sustain.* (Rose 1988: 78)

The complex historical phenomenon of authorship and its related law and ethics is reduced to an issue in epistemology. Yet these theoretical elaborations on the theme of the derivative or 'quoted' nature of all writing are not usually confronted with specific practical issues, such as how best to deal with academic plagiarism. We can imagine their response in the abstract: 'If no writing is appropriable, why worry about plagiarism? So plagiarize and free yourself from the constraints imposed on language and meaning by the bourgeois notion of private property and the law which is its instrument!' Perhaps there would be a claim that, in truly communitarian cultures untouched by the private property, plagiarism was a sort of spontaneous 'sharing' or open 'dialogue'!

But what if our objective is to achieve an orderly ethical and professional existence in this world here and now? For all their theoretical attraction, what do highly refinded theoretical schemas contribute to resolving the difficult decisions that regulation of plagiarism involves? In fact, such schemas tend to dissolve plagiarism as a professional and ethical problem by shifting discussion to a higher plane where truths are stated about language - that no text is 'bounded', that no individual author has proprietary claim on words or images. These truths might be interesting but they remain unreal. They are out of their depth in administrative spheres where judgements on merit (and demerit - following a proven act of plagiarism) have routinely to be made in relation not only to publishing but also to decisions on professional appointment and promotion. Nor is it clear that these truths have pertinence in the legal sphere of copyright. For those of us who take academic professionalism as an ethical achievement still in the making and not as a barrier to human freedom, this is reason to argue that there is no bridge from articulating a literary theory to determining on a case of professional malpractice.

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It is possible to insist on the need for decent administrative means to govern the problem of academic plagiarism while recognising that plagiarism is a culturally and historically variable phenomenon. Other times, other manners. In the great age of Renaissance rhetoric, Quintillian's advice was current: 'It is a universal rule of of life that we should wish to copy what we approve in others' (*Institutes of Oratory*, Book X, chap. 2, #2). A modern commentator can observe about literate conduct in those times: 'The humanist doctrine of imitation, which encouraged careful echoing of expressions or whole passages out of the best writing of antiquity, helped stock the mind with both ideas and words'. (Ong 1971) Yet, to judge from the lines of Jonathan Swift, then too not everyone saw copying as an unqualified good:

> *But hee is worst, who (beggarly) doth chaw*
> *Others wits fruits, and in his ravenous maw*
> *Rankly digested, doth those things outspue,*
> *As his own things; and they are his owne, 'tis true,*
> *For if one eate my meate, though it be knowne,*
> *The meate was mine, th'excrement is his own.* (in White 1965:127)[6]

Chew it over, we might say, but then check your source and give its attribution. This is best practice.

Assuming that academic conduct is capable of ethical regulation, what is needed now is an agreed array of procedures for dealing with charges of plagiarism.[7] An Australian lawyer has expressed the view that 'to lose copyright in their writings would mean that academics would be likely to lose one of their few remaining sources of autonomy and fulfilment within the academy' (Thornton 1992: 5). Perhaps so. But autonomy can mean everything and nothing. The fact that some identify it with transgression and law-breaking while others invoke the law as its protection leads me to think that the actual conditions of autonomy - and the conduct that goes with it - remain quite obscure. In relation to plagiarism, few would equate autonomy with being 'let alone' to plagiarize!

Although few academics would include it within the norms of professional conduct, academic plagiarism brings insufficient shame and dishonour because the university code of professional conduct remains embryonic and pre-professional. Historical developments inside the universities have not yet 'juridified' the malpractice that is

plagiarism. The solution is not a matter of philosophy. It might help all parties - individual academics, learned societies and university institutions - if, to begin, we paid specific attention to our own and our students' techniques of annotating and using others' texts. This might seem banal but, as we have seen from the actual cases, these are also techniques of ethical conduct, particularly in our present technological circumstances.

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Endnotes

1. A charge of plagiarism can become an element of the context in which a work is received and reviewed, particularly if the charge receives a certain publicity. See below on the difficult question of public disclosure in plagiarism cases.

2. With the assistance of data provided through the good offices of the AVCC, I hope to follow up the present note with a more empirical report on the recent incidence of plagiarism in Australian universities.

3. Sokolow's case is considered in Thomas Mallon (1990), *Stolen Words: Forays into the Origins and Ravages of Plagiarism*, Penguin Books. Mallon investigates plagiarisms that include the television series *Falcon Crest* alongside the more celebrated literary instances involving Lawrence Sterne and Samuel Taylor Coleridge. Mallon provides a useful bibliography of the subject.

4. In other circumstances of liability, for instance where criminal negligence is the issue, carelessness might not be so innocuous or benign.

5. If the 'defendant' is named (to discourage further free riders?), should not the 'plaintiff' also be named (to discourage malicious accusations)?

6. White (1965) offers an extended discussion of how in the period 1500-1625 English authors viewed imitation or what we now call plagiarism. He also provides a useful historical note on the first anglicization, at the end of the sixteenth century, of the Latin poet Martial's use of the term *plagiarus* (or kidnapper, man-stealer) in the figurative sense of a literary thief. White continues: 'About twenty years later two [other English writers] employed the equivalent nouns "plagiarism" and "plagium" as English terms. No other uses of the epithet "plagiary" or its derivatives until after 1625 are cited in *A New English Dictionary*: so slowly was this addition to the critical vocabulary accepted that, far from becoming naturalized, it achieved only the rarest use during more than a quarter of a century after its introduction. Furthermore, the appearance of the modern term does not ... indicate the appearance of the modern attitude. Elizabethan writers took the word over from the classics with its classical significance, and no more' .

7. Any steps to formulate such procedures would need to note the existing AVCC and NHMRC guidelines on misconduct in research. I thank Colin McAndrew for this reminder.

8. The ethical implications of techniques of annotation and note-taking can be related to a communications technology which facilitates electronic transfer not only of funds but also of parcels of predigitized text. This point is made by Jane Ginsburg (1992:182): 'Once the work is in digital form, it is very easy to excerpt, and thus very easy to take out of context. This is particularly true if a portion of the scanned work is sent to a recipient who is unable to consult the full text of the work. In addition, unless digitized excerpts are carefully labelled, they risk incorporation in the user's work without attribution. Put more bluntly, copying in digital media creates new opportunities for plagiarism'.

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